

REMARKS/ARGUMENTS

Responsive to the Official Action mailed February 6, 2004, applicant has further amended the claims of her application in an earnest effort to place this case in condition for allowance. Specifically, independent claim 1, and dependent claim 6 have been amended. Reconsideration is respectfully requested.

In response to the Examiner's provisional obviousness-type double patenting rejection, applicant submits herewith a Terminal Disclaimer, referencing commonly assigned co-pending application Serial No. 10/036,902. It is respectfully submitted that this rejection can now be withdrawn.

By the amendment of claim 6, the inadvertent incorrect claim dependency as been revised. It is believed that this rejection can now be withdrawn.

In rejecting the pending claims under 35 U.S.C. §102 and §103, the Examiner has relied upon PCT Publication No. WO99/38541, to Nakamura. In the previous Action, the Examiner further relied upon U.S. Patent No. 6,287,634, to Beall, et al. These rejections are respectfully traversed.

In the Action, the Examiner has noted applicant's claimed recitation that the "admixture is topically applied in aqueous form to the base substrate material", and then states "the patentability of a product does not depend on its method of production". Applicant must respectfully note that this second statement might be characterized as a "cropped quote" of M.P.E.P. Section 2113, which specifically provides that while product-by-process claims are not limited to

the manipulation of the recited steps, such claims *are limited by "only the structure implied by the steps"*. Thus, applicant must respectfully maintain that the noted claim language clearly *structurally* differentiates applicant's claimed article from the cited Nakamura reference, in that the recited "topical application" clearly implies that the recited admixture is *present at the surface* of the claimed substrate, in clear distinction from the cited Nakamura reference, which has *no teachings* of application of an odor-controlling compound *to the base substrate*. Rather, there is no argument but that Nakamura is *specifically limited in its teachings* to the coating of hydrogel-forming particles with an odor control compound, with *no teaching or suggestion* of applying such a compound to the associated base substrate material.

Moreover, it is respectfully maintained that applicant's invention as claimed is simply not suggested by the teachings of Namakura. Applicant's claims specifically set forth that *an admixture* is applied to the base substrate material, wherein the admixture comprises hydroxydiphenyl ether and an aliphatic acid carrier, *with the admixture of these two components applied to the base substrate material*. Clearly, Nakamura cannot teach such a construct, since the Examiner makes reference to *the absorbent particles themselves* in Namakura as representing the claimed acidic component of applicant's recited admixture. Clearly, Nakamura does not teach application of an admixture to a substrate material.

Moreover, it is respectfully maintained that Nakamura is simply devoid of any teaching or suggestion of the resultant cooperation of components which is achieved by applicant's claimed admixture. As specifically discussed at pages 4 and 6 of applicant's Specification:

The hydroxydiphenylether reduces the metabolic performance of bacteria present in the environment. The presence of hydroxydiphenyl ether in a modified acidic carrier further improves the bacteriostatic performance of the ether as well as introducing a pH shift that disfavors the further release of ammonia by inducing protonation of the ammonia into a non-volatile ammonia ion.

As further stated in applicant's Specification in connection with a preferred embodiment:

By introducing the trichlorodiphenyl ether in a modified acidic carrier, performance of the mixture is significantly enhanced. Suitable modified acidic carriers include those acids that shift the pH of the trichlorodiphenylether environment to an approximate range of between 3.0 and 5.0. . . . A presently preferred modified acidic carrier is one selected from the aliphatic acids, with hexanedioic acid being most preferred.

In this context, the shortcomings of the teachings of Nakamura in suggesting the present invention become readily apparent. As specifically stated in Nakamura, at page 3, line 25 *et seq.*, "the present invention is directed to a antimicrobial hydrogel-forming absorbent polymer comprising a hydrogel-absorbent polymer, and an antimicrobial. . . . As discussed at page 18 of Nakamura, the A-HFAP (that is, the antimicrobial hydrogel-forming absorbent

polymer) "is attached to the substrate web", "is distributed between 2 layered tissues", or is "distributed in the fibrous matrix", with no teaching or suggestion of the present invention, wherein the claimed admixture *has been topically applied in aqueous form to the base substrate*, thus providing a structure which is clearly distinct from any contemplated arrangement of Namakura.

Moreover, a careful study of the Nakamura reference shows *no teaching or suggestion* that an odor-control compound be provided in the form of an admixture, with the acid carrier acting to shift the pH of the hydroxydiphenylether environment to induce protonation of odor-causing ammonia, as claimed.

In the Action, the Examiner has acknowledged that "obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found in either the references themselves or the knowledge generally available to one of ordinary skill in the art". Applicant must respectfully maintain that the Nakamura reference clearly fails to anticipate or render obvious applicant's absorbent article, as now claimed. Not only does Nakamura clearly fail to teach application of an odor control admixture to a base substrate, as claimed by applicant, but there is simply no teaching or suggestion whatsoever in Nakamura of a cooperative odor control effect by the antimicrobial agent, and associated aliphatic acid carrier.

In view of the foregoing, formal allowance of claims 1, 3-4, and 6-11 is believed to be in order and is respectfully solicited. Should the Examiner wish to

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Speak with applicant's attorneys, they may be reached at the number indicated below.

The Commissioner is hereby authorized to charge any additional fee which may be required in connection with this submission to Deposit Account No. 23-0785.

Respectfully submitted,

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